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Book Review
Islam and Human Rights Tradition and Politics
By
Ann Elizabeth Mayer

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Westview Press

The events of the Arab Spring have brought an enormous amount of attention to the subject of Islam and human rights. In Egypt and Tunisia, Islamists and secular liberals have embarked upon the contentious process of drafting post-revolutionary constitutions. In both countries, such efforts have been centrally concerned with striking an appropriate balance between deference to Islamic norms and respect for international human rights standards. The updated fifth edition of Ann Elizabeth Mayer's "Islam and Human Rights" seeks to capitalize on the interest generated by these developments.

Mayer approaches the subject of Islam and human rights by providing a critical evaluation of what she labels "Islamic human rights schemes". These are attempts by conservative religious scholars and intellectuals to produce an Islamic version of human rights law – typically in the form of an Islamic "bill of rights". The resulting schemes sometimes replicate provisions found in documents like the 1948 Universal Declaration of Human Rights. More often, however, they modify these provisions in accordance with Islamic criteria or introduce alternative sets of rights not found in contemporary international law. Mayer discusses several such Islamic human rights schemes. Prominent among them are Iran's Islamic Constitution and the 1979 "Draft of the Islamic Constitution" put forth by Egypt's al-Azhar. She also takes up the 1981 "Universal Islamic Declaration of Human Rights" and the 1990 "Cairo Declaration of Human Rights in Islam", both produced by representatives of various Muslim governments.

~173~

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A. Nakissa/Societies Without Borders 8:1 (2013) 173-176

Mayer situates her study in the field of comparative law. Her overarching goal is to ascertain in what ways Islamic human rights schemes fall short of international human rights norms. Describing her approach, Mayer states: “International human rights law is used as the standard, and Islamic human rights schemes are assessed in relation to it in order to elucidate where they converge or diverge and also to identify where the Islamic schemes resort to vague and confusing terms that cloak the full extent of the deviations.”¹ In Mayer’s eyes, identifying these “deviations” is all the more challenging because Islamic human rights schemes explicitly proclaim commitment to the values of freedom and equality. Mayer sets herself the task of proving that such proclamations are superficial and insincere. Accordingly, Mayer devotes chapters to how Islamic human rights schemes fail to guarantee all citizens equality under the law, how they fail to guarantee women’s rights, how they fail to protect the rights of non-Muslim minorities, and how they fail to safeguard freedom of expression and religion. The updated fifth edition of Mayer’s book allows her to relate these issues to recent political developments. It also includes a new chapter on how Islamic human rights schemes fail to protect the rights of gay, lesbian, and transgender communities.

In treating these matters, Mayer does not claim neutrality. From the outset she declares her deep belief “in the normative character of human rights principles set forth in international law and in their universality.”² Mayer affirms that her scholarship aims at advocating these principles, even though such an approach has previously exposed her to “vitriolic attacks” from others.^{3,4}

Given Mayer’s normative commitments, her analysis does not incorporate critical Western scholarship on human rights. More importantly, she is dismissive of the critical views articulated by proponents of Islamic human rights schemes themselves. In some instances, she does give perfunctory consideration to the reasoning underlying such perspectives. However, in these cases Mayer immediately follows up with what are presented as decisive refutations.

Generally speaking, Mayer’s tone is a polemical one. For instance, she asserts that “Iran’s ruling clerics have displayed thuggish behavior antithetical to legality”, and compares them to a “criminal syndicate.”⁵ A few pages later, the Taliban’s approach to law in

A. Nakissa/Societies Without Borders 8:1 (2013) 173-176

Afghanistan is described as “the attitudes of a brutish rabble”.⁶ As might be deduced from Mayer’s language, she is not interested in fostering an understanding of such groups’ views.

In presenting the opinions of Muslim jurists, Mayer does not substantively engage with Islamic law or legal theory. The key writings in this tradition are in Arabic. Yet Mayer’s references are, for practical purposes, entirely in English and French. Her understanding of the Islamic legal tradition is based on a limited familiarity with the secondary literature. To the extent that primary sources are used, Mayer relies on the vanishingly small amount of legal material which has been translated into European languages. Mayer’s only engagement with original Arabic texts comes in the form of intensive quotation from a few small pamphlets outlining Islamic human rights schemes.

Mayer does not seem to recognize that in most, if not all, cases, the content of these schemes reflects broader trends in modern Islamic jurisprudence. These trends originate in the early twentieth century reformism of figures like Muhammad ‘Abduh and Rashid Rida, continuing on today in the work of influential jurists such as Yusuf al-Qaradawi and Ahmad al-Raysuni. Building on ideas present within medieval legal theory, such trends conceptualize Shari’a commandments as operating to protect fundamental human interests (maslaha) rooted in universal human nature (fitra).⁷ It is true that the fundamental interests posited by Muslim jurists often differ from those acknowledged in international human rights law. For instance, Muslim jurists enumerate “honor” (‘ird) and affiliation with a patrilineage (nasab) as natural needs of all human beings. The Shari’a safeguards these needs in the form of rights (huquq). It is the protection of these rights which gives rise to rulings banning extra-marital sex and the like. From this perspective, a basic reason (perhaps the basic reason) why Islamic human rights schemes differ from their Western counterparts is that they presuppose a different idea of what it means to be human and, hence, which human interests/rights it is essential to promote and protect. Because Mayer does not engage with Arabic legal texts, she cannot address this issue. Yet it is arguably indispensable to any satisfactory treatment of Islam and human rights.

A. Nakissa/Societies Without Borders 8:1 (2013) 173-176

Needless to say, interdisciplinary research on law and human rights has become increasingly sensitive to the fact that conceptions of human nature differ from society to society, being shaped by distinct forms of cultural practice. Such attentiveness to cultural difference is particularly evident in recent anthropological work on human rights, but also manifests itself more broadly wherever the influence of post-structuralist antihumanism has been felt. Mayer's commitment to the universality of human rights presupposes a belief that contemporary Western notions of human nature are similarly universal. Such a stance is an obstacle to understanding how non-Western societies, including Muslim societies, perceive human rights.

In the end, Mayer's book will have greatest appeal for fellow human rights activists. It will have significantly less appeal for those primarily interested in understanding Muslim views on human rights.

Endnotes

1. Mayer:3
2. Mayer:xii
3. Mayer:xi-xii
4. Mayer:4
5. Mayer:35-36
6. Mayer:40
7. Legal discourse of this type typically falls under the heading of "maqasid al-Shari'a".